

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 30 1975

LARRY GAIL LINEBARGER,

Petitioner,

vs.

STATE OF OKLAHOMA, et al.,

Respondents.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT  
NO. 75-C-164

O R D E R

This is a proceeding brought pursuant to the provisions of 28 U.S.C. § 2254 by a State prisoner confined in the Oklahoma State Penitentiary at McAlester, Oklahoma. Petitioner attacks the validity of the judgment and sentence imposed by the District Court of Tulsa County, State of Oklahoma, in Case No. CRF-73-565. After a plea of not guilty to the charge of larceny of an automobile after former conviction of a felony, the petitioner was tried by a jury and upon a finding of guilty he was, on October 26, 1973, sentenced to confinement in the Oklahoma State Penitentiary for a period of 25 years. Thereafter, on September 30, 1974, the conviction and sentence was affirmed by the Court of Criminal Appeals of the State of Oklahoma, reported Linebarger v. State, Okl. Cr., 527 P.2d 178 (1974).

Subsequently petitioner applied for post-conviction relief in the District Court in and for Tulsa County, State of Oklahoma. An evidentiary hearing was held on January 28, 1975. Relief was denied. Petitioner appealed the judgment denying relief to the Court of Criminal Appeals of the State of Oklahoma, and said Court on March 11, 1975, issued its Order affirming the Order of the District Court in and for Tulsa County, Oklahoma, denying petitioner post-conviction relief.

The petitioner alleges and the file reflects that he has exhausted the remedies available to him in the Courts of the State of Oklahoma.

By Order of this Court made and entered on the 23rd day of June, 1975, the respondents were ordered to show cause why the writ of habeas corpus sought by petitioner in this proceeding should not be granted. This Order was complied with by response filed by the Attorney General of the State of Oklahoma on the 15th day of July, 1975. Attached to the response was

the original record and transcript of testimony taken at the time of trial and the original record and transcript of testimony in petitioner's application for post-conviction relief in the District Court in and for Tulsa County, Oklahoma. Thereafter, petitioner filed an application for bail, and the Court finds said application should be overruled.

Petitioner contends that his judgment and sentence should be vacated and in support thereof makes the following allegations:

Petitioner in his first allegation claims: "That he was denied due process by the trial Court's failure to compel disclosure of the informer's identity."

This allegation is based on a ruling by the trial Court to suppress certain evidence. The ruling followed a hearing in chambers wherein petitioner endeavored to ascertain from the prosecuting attorney the identity of the person who informed the investigating officer concerning petitioner's alleged connection with the theft of an automobile for which he was being tried. The trial Court ruled that the State was not required to disclose such information and denied the request. In Roviaro v. United States, 353 U. S. 53 (1957), the Court stated:

"What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. Scher v. United States, 305 U. S. 251, 254; In re Quarles and Butler, 158 U. S. 532; Vogel v. Gruaz, 110 U. S. 311, 316. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation."

In this case, the record clearly shows that the charge against petitioner resulted from the extensive investigation of the police department of the City of Tulsa, Oklahoma, and not from any evidence furnished by an informer. Petitioner's allegation is without merit and should be denied.

Petitioner in his second allegation contends: "Remarks made by the prosecuting attorney during voir dire constituted a fundamental error."

The remarks complained of were made by the prosecuting attorney during voir dire wherein the assistant District Attorney stated: "The

state believes the defendant is guilty." At the time of said statement, petitioner's attorney objected and the Court admonished the jury to disregard the statement (T. 21).

Our Courts have held that a defendant is entitled to a fair trial and not a perfect one. Lutwak v. United States, 344 U. S. 604, 619 (1953). Unless there is a reasonable possibility that the improper statement contributed to the conviction, reversal is not required. Bruton v. United States, 391 U. S. 123 (1968). The properly admitted evidence as reflected by the testimony in this case is so overwhelming that it is clear beyond a reasonable doubt that the statement complained of amounted at the most to harmless error. Petitioner's allegation is without merit and should be denied.

Petitioner in his third allegation contends: "The court, hearing the application for post-conviction relief, committed error by not considering the true confession by a stranger to the crime as a basis for judicial relief."

The record of testimony taken in connection with petitioner's application for post-conviction relief does not sustain petitioner's allegation. The record discloses that the Court took into consideration all competent testimony of the witnesses who testified including the letter of confession written by the witness, Ronald E. Hausam, addressed to S. M. "Buddy" Fallis, District Attorney, Tulsa, Oklahoma, and which was introduced at said hearing as defendant's Exhibit No. 2 and bears the date of October 31, 1974, which date is over two years subsequent to petitioner's trial, conviction and sentence. It is further noted that the witness Hausam testified and confessed to stealing the automobile involved on October 22, 1972, or in the very early hours of November 22, 1972. In the trial transcript, the witness Greg Howard, Manager of Dealer's Auto Auction, from where the automobile was allegedly stolen, testified that said automobile was on his lot on November 22, 1972, and until the afternoon of November 23, 1972, and that on the morning of the 23rd he showed the automobile to one Sharon Linebarger and an unidentified

man. At the conclusion of the evidentiary hearing, on application for post-conviction relief, the Court stated that it did not find the testimony of the witness Ronald E. Hausam credible or convincing (p. 108-109) and denied petitioner's application for relief.

The petitioner's implication that the Court hearing his application for post-conviction relief did not properly consider the confession introduced in evidence is contradicted and unsupported by the record. An application for post-conviction relief which states only bald conclusions unsupported by allegations of fact and obviously contrary to the written record is legally insufficient and may be denied without a hearing. Webb v. Crouse, 359 F.2d 394 (10th Cir. 1966). Further, an error of law occurring in a collateral State proceeding does not reach constitutional proportions. LeMay v. Henderson, 407 F.2d 494 (6th Cir. 1969) Cert. den. 395 U. S. 970. Petitioner's allegation is without merit and should be denied.

Petitioner in his fourth and final allegation states: "The state impermissibly used evidence of the actions of petitioner's wife to convict contrary to due process requirements."

Petitioner's allegation is without merit in either fact or law and is based solely on his assumption. The allegation is only a statement of a bald conclusion unsupported by allegations of fact and is therefore legally insufficient. Stephens v. United States, 246 F.2d 607 (10th Cir. 1957); Martinez v. United States, 344 F.2d 325 (10th Cir. 1965). When it appears in Federal habeas corpus proceedings that there was some evidence from which the jury could have properly determined petitioner's guilt beyond a reasonable doubt pursuant to the Court's instructions, petition for writ of habeas corpus was properly denied. Holloway v. Cox, 437 F.2d 412 (4th Cir. 1971). The Court's Instruction No. 2 states: "You are instructed that the defendant is presumed to be innocent of the crime charged against him in the information until his guilt is established by evidence beyond a reasonable doubt, and that this presumption of innocence continues with the defendant until every material allegation of the information is proven by evidence beyond a reasonable doubt."

The testimony complained of by petitioner in this allegation concerned the testimony of Mr. Greg Howard, a witness for the State, and concerned the identity of one Mrs. Linebarger. The following testimony appeared on Page 82 of the trial transcript, lines 18 through 25, and on Page 83, lines 1 through 6:

QUESTION: [Mr. Sloan] Mr. Howard, you in your answer to the last question said that the individual that day was Mrs. Linebarger. Do you know of your own knowledge whether or not it is Mrs. or Miss or -- --

ANSWER: No, I don't -- --

QUESTION: Or do you know her as her regular name?

ANSWER: No, I don't -- -- I don't really know that it is Mrs. Linebarger. But that's who she is supposed to be, I understand, at the preliminary hearing. I identified her there, but -- --

THE COURT: You don't know that she is Mrs. Linebarger?

MR. COWLEY: Of your own knowledge?

ANSWER: Only from hearsay, I guess. From being here at the preliminary hearing.

At Page 85 of the transcript, lines 21 through 25, and Page 86, lines 1 and 2, the Court makes the following statement:

"Ladies and gentlemen of the jury, the court is going to admonish you to disregard the last answer that the witness gave to the question asked, and I believe his answer was Mrs. Linebarger.


"And the court admonishes you to disregard that answer and not consider it and I will allow the state to continue the direct examination."

Habeas corpus is not a substitute for appeal and matters involving trial error may not be reviewed collaterally. McInnes v. Anderson, 366 F.Supp. 983 (E.D. Okla. 1973). Petitioner's allegation is without merit and should be denied.

The transcript and record in Case No. CRF-73-565 in the District Court in and for Tulsa County, Oklahoma, conclusively shows that the petitioner is not entitled to relief. Therefore, there is no necessity for this Court to hold an evidentiary hearing. Semet v. United States, 369 F.2d 90 (10th Cir. 1966).

IT IS, THEREFORE, ORDERED that the application for bail be and it is hereby overruled, and the petition for writ of habeas corpus of Larry Gail Linebarger be and it is hereby denied and the case is dismissed.

Dated this 30<sup>th</sup> day of September, 1975, at Tulsa, Oklahoma.

  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

VALERIE MARIE NAPIER,

Petitioner,

vs.

SISTER MARY GERTRUDE, ADMINISTRATOR,  
Vianney Residence (and School) for  
Girls, Tulsa, et al.,

Respondents.

NO. 75-C-81 ✓

**FILED**

SEP 30 1975

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

This is a proceeding brought pursuant to the provisions of 28 U.S.C. § 2254 by a juvenile confined in the Vianney Residence (and School) for Girls, Tulsa, Oklahoma, for an indefinite period, pursuant to the judgment and order of the District Court in and for Tulsa County, Oklahoma, Juvenile Division. In Case No. JFJ-70-643, the District Court of Tulsa County, Oklahoma, Juvenile Division, found the petitioner to be a juvenile in need of supervision under the provisions of 10 O.S. 1971, §1171(c) and placed petitioner in the custody of the Vianney School for Girls.

Petitioner appealed the judgment and sentence of the District Court in and for Tulsa County, Oklahoma, Juvenile Division, to the Supreme Court of the State of Oklahoma, and said Court on February 18, 1975, entered its Order affirming the judgment and sentence of the District Court of Tulsa County, Juvenile Division. In re Napier, Okl., 532 P.2d 423 (1975).

Petitioner's application to proceed in forma pauperis is supported by papers satisfying the requirements of 28 U.S.C. § 1915(a), and it was allowed by the Order of this Court made and entered on the 27th day of February, 1975.

The file reflects that the petitioner has exhausted the remedies available to her in the Courts of the State of Oklahoma.

By Order of this Court made and entered on the 21st day of March, 1975, the respondents were ordered to show cause why the writ of habeas corpus sought by petitioner in this proceeding should not be granted. This Order was complied with by Response filed by the Attorney General of the State of Oklahoma on the 11th day of April, 1975. Attached to

the Response was the original record and transcript of testimony taken at the time of hearing before the duly appointed referee of the Court.

Petitioner contends that the judgment and sentence of the District Court of Tulsa County, Oklahoma, Juvenile Division, should be vacated and in support thereof alleges:

That the governing statute under which sentence was imposed, 10 O.S. 1971 §1101(c), is unconstitutionally vague and thus violative of the Fifth and Fourteenth Amendments to the Constitution of the United States.

The Statute complained of by petitioner provides:

"The term 'child in need of supervision' means a child who is habitually truant from school, or who is beyond the control of his parents, guardian or other custodian, or who habitually deports himself so as to injure or endanger the health or morals of himself or others."

The issue involved in this matter is whether the Statute states, with sufficient clarity, the proscribed conduct so that ordinary persons would have a common understanding of what this proscribed conduct is. The Court finds that the statute herein under consideration should be so construed.

The record discloses that petitioner was found to be a child in need of supervision because she was beyond the control of her legal guardian. She had run away from home, had been verbally abusive toward her grandparents, had threatened her grandfather, and had refused to attend school. At the hearing before the referee, petitioner's attorney made the following statement (Transcript Page 5, Lines 11 through 19):

MR. FLEAK: "Your Honor, in answer to those charges notwithstanding the motion we just argued, we will stipulate that the conduct which was charged these young girls, that it is true that they did do those acts although we would demur to the petition as set out along the lines of the motion. They do not set out the conduct which is prohibited by statute; therefore, we would demur to the petition, but we will stipulate as to the acts they did do what it says there."

The Supreme Court stated that, " . . ., if the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague even though marginal cases could be put where doubt might arise." United States v. Harriss, 347 U. S. 612,



618 (1954). It is not feasible to specify all instances when a child might be beyond control, and the Supreme Court has held that it is not necessary or required to spell out every prohibited act or omission if the general terms of a statute are understandable. United States v. Petrillo, 332 U. S. 1 (1947).

The petitioner in S\*\*\* S\*\*\* and L\*\*\* B\*\*\* v. State, 299 A.2d 560 (1973), as the petitioner herein, attempted to equate the due process requirements in juvenile proceedings with the well established due process of criminal proceedings. The Court in tracing the history of the treatment afforded juveniles cited from Ex Parte Crouse, 4 Wharton 9 (Pa. 1839):

"The infant has been snatched from a course which must have ended in confirmed depravity, and, not only is the restraint of her person lawful, but it would be an act of extreme cruelty to release her from it. This concept of parens patriae has become imbedded in the law and is used as a justification for the exercise of state power to remove children from the environment in which they were found and place them in an environment chosen by the state."

In not accepting this contention of equating due process in juvenile proceedings and criminal proceedings, the Court cited McKeiver v. Pennsylvania, 403 U. S. 528 (1971), which held that the juvenile is not entitled, as a matter of right, to a jury trial, but only that the precepts of "fundamental fairness" be followed. The Court further stated at Page 568 that, ". . . just as the natural parent may constitutionally place limitation on the child's freedom of locomotion and may substitute the will and judgment of the parent for that of the child and thus constrain the child's will for his own protection, so also may the State in the exercise of its parens patriae guardianship." Every loss of liberty, therefore, does not give rise to an application of the standards of due process required in criminal proceedings, and more particularly, not in the case presently before this Court.

The petitioner's allegation is not sustained by facts or by law and should be denied.


Petitioner's second allegation that this action should be a class action is moot. The request for a class action becomes moot when the

merits are determined against the appellant. Burke v. United States, 480 F.2d 279 (9th Cir. 1973) Cert. denied 414 U. S. 913.

The transcript and record in Case No. JFJ-70-643 in the District Court in and for Tulsa County, Oklahoma, Juvenile Division, conclusively show that the petitioner is not entitled to relief. Therefore, there is no necessity for this Court to hold an evidentiary hearing. Semet v. United States, 369 F.2d 90 (10th Cir. 1966).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Valerie Marie Napier be and it is hereby denied and the case is dismissed.

Dated this 5<sup>th</sup> day of September, 1975, at Tulsa, Oklahoma.

  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COMMERCIAL SOLVENTS CORPORATION,  
a Maryland corporation,

Plaintiff,

-vs-

DELTA AVIATION, INC., H. A. CHAPMAN,  
JR., SHARON CHAPMAN, RALPH L.  
ABERCROMBIE and H. A. CHAPMAN,

Defendants.

Civil Action

No. 75-C-313

**FILED**

SEP 30 1975

ORDER

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Now on this 26th day of September, 1975, comes on for hearing the Motion of the individually named Defendants, H. A. Chapman, Jr., Sharon Chapman, Ralph L. Abercrombie, and H. A. Chapman, to dismiss the Plaintiff's Second Cause of Action for the reason that said Cause of Action fails to state a claim against said individually named Defendants upon which relief can be granted. The Plaintiff appeared by its attorney, Larry T. Chambers of Doerner, Stuart, Saunders, Daniel & Langenkamp, and the Defendants appeared by their attorneys, James C. T. Hardwick and J. Kevin Hayes of Hall, Estill, Hardwick, Gable, Collingsworth & Nelson.


Upon a reading of the pleadings on file herein and the briefs of the parties and upon hearing the oral argument of counsel, the Court finds that the Defendant, Delta Aviation, Inc., is an Oklahoma corporation validly formed under the laws of Oklahoma; that said corporation is not and has never been qualified to do business in the State of Tennessee, and that Plaintiff's Second Cause of Action is framed under Tennessee Code Annotated §48-1405, which findings are stipulated by the parties.

The Court further finds that T.C.A. §48-1405 imposes liability on persons assuming to act on behalf of a corporation which has never been validly formed under the laws of

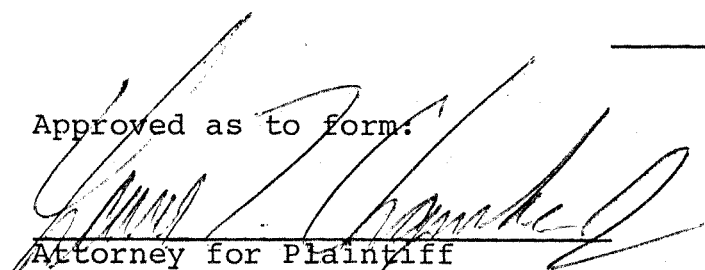
the State of its intended domicile, and does not impose liability upon any persons entering into contracts on behalf of a validly formed foreign corporation not qualified to do business in Tennessee; that the only consequences for the failure of the Defendants, Delta Aviation, Inc., to obtain a certificate of authority to do business in the State of Tennessee are governed by T.C.A. §48-1106, which does not impose personal liability upon the individually named Defendants; that, therefore, the individually named Defendants are not "persons who assume to act as a corporation without authority to do so" within the meaning of T.C.A. §48-1405.

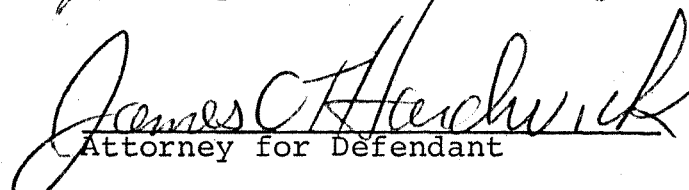
IT IS, THEREFORE, ORDERED AND ADJUDGED that Defendants' Motion to Dismiss be, and the same hereby is, sustained, and the Plaintiff's claim against the individually named Defendants dismissed.

DATED this 30 day of September, 1975.

  
District Judge

Approved as to form:

  
Attorney for Plaintiff

  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COMMERCIAL SOLVENTS CORPORATION,  
a Maryland corporation,

Plaintiff,

-vs-

DELTA AVIATION, INC., H. A. CHAPMAN,  
JR., SHARON CHAPMAN, RALPH L.  
ABERCROMBIE, and H. A. CHAPMAN,

Defendants.

Civil Action

No. 75-C-313

**FILED**  
SEP 30 1975

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

Now on this 26th day of September, 1975, comes on for hearing the Motion of Plaintiff, Commercial Solvents Corporation, for judgment against the corporate Defendant, Delta Aviation, Inc. The Plaintiff appeared by its attorney Larry T. Chambers of Doerner, Stuart, Saunders, Daniel & Langenkamp, and the Defendants appeared by their attorneys, James C. T. Hardwick and J. Kevin Hayes of Hall, Estill, Hardwick, Gable, Collingsworth & Nelson.

Upon a reading of the pleadings on file herein and upon hearing arguments of counsel, wherein counsel for Defendant announced to the Court that they had no objection to the Court's rendering a judgment against the corporate Defendant in conformity with Plaintiff's Complaint, the Court finds that Plaintiff is entitled to a judgment against the Defendant, Delta Aviation, Inc., in the sum of \$16,000.00 plus interest at the rate of six percent (6%) per annum, from and after the 3rd day of June, 1975, until the 26th day of September, 1975, plus interest on the principal amount from and after the 26th day of September, 1975, at the rate of ten percent (10%) per annum, together with the costs of this action.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover of the Defendant, Delta Aviation, Inc.,

a judgment in the sum of \$16,000.00 plus interest at the rate of six percent (6%) per annum, from and after the 3rd day of June, 1975, until the 26th day of September, 1975, plus interest on the principal amount from and after the 26th day of September, 1975, at the rate of ten percent (10%) per annum, together with the costs of this action.

DATED this 30 day of September, 1975.

*Wm. Salebook*

District Judge

Approved as to form:

*[Signature]*  
Attorney for Plaintiff

*James C. Hardwick*  
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CRANE CO.,

Plaintiff,

vs.

No. 75-C-304

UNITED SUPPLY CO. OF  
TULSA, INC., JACK L.  
SPRADLING, and YVONNE  
SPRADLING,

Defendants.

**FILED**  
**SEP 30 1975**

*Jack C. Silver, Clerk*  
**U. S. DISTRICT COURT**

JUDGMENT

On this 26th day of September, 1975 the above styled and numbered cause comes on for disposition before the undersigned United States District Judge; the plaintiff appearing by and through its attorney, Robert S. Rizley of the firm Rizley, Prichard, Ford, Norman & Reed, and the defendants, United Supply Co. of Tulsa, Inc., Jack L. Spradling and Yvonne Spradling and each of them, failed to appear either personally or by and through their attorney, George S. Thompson. The Court finds that on the 10th day of September, 1975 the United States District Court Clerk gave notice to the defendants and each of them through their attorney, George S. Thompson, that the above styled and numbered cause was set for disposition on the 26th day of September, 1975 at 9:30 o'clock A.M.

The Court further finds that the plaintiff filed its Complaint herein on July 9, 1975; that George S. Thompson, attorney for defendants, United Supply Co. of Tulsa, Inc., Jack L. Spradling and Yvonne Spradling, was served with process on July 9, 1975; that on August 21, 1975 the undersigned District Judge entered a Show Cause Order in which the defendants and each of them were given ten (10) days to show cause why the Court should not enter judgment in conformity with the Complaint for the reason that the defendants and each of them had failed to file an answer pursuant to Fed. Rules Civ.Proc. Rule 12(a), 28 U.S.C.A.; that the plaintiff is entitled to judgment in conformity with the Complaint filed herein; that the defendant, United Supply Co. of Tulsa, Inc., is indebted to the plaintiff in the sum of

\$13,516.14 upon the account attached to plaintiff's Complaint marked as Exhibit "A" and made a part thereof; that the defendants Jack L. Spradling and Yvonne Spradling, guaranteed payment of the account to plaintiff from defendant United Supply Co. of Tulsa, Inc. pursuant to the Guarantee attached to plaintiff's Complaint marked as Exhibit "B" and made a part thereof; that the defendant, United Supply Co. of Tulsa Inc., has failed and continues to fail to pay plaintiff the amount due; that the defendants, Jack L. Spradling and Yvonne Spradling, and each of them have refused to pay plaintiff the sum due plaintiff pursuant to said Guarantee agreement although demand has been made on all defendants to pay said sum; that the plaintiff, Crane Co., is entitled to judgment against the defendants, United Supply Co. of Tulsa, Inc., Jack L. Spradling and Yvonne Spradling and each of them for the sum of \$13,516.14 plus interest from the date of judgment, costs and plus attorneys' fees in the sum of \$500.00. It is therefore

ORDERED that plaintiff, Crane Co. have and recover judgment against the defendants, United Supply Co. of Tulsa, Inc., Jack L. Spradling and Yvonne Spradling and each of them, in the sum of \$13,516.14 plus interest from date of judgment, plus costs and attorneys' fees in the sum of \$500.00.



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H. DALE COOK  
United States District Judge



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
SEP 30 1975  
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Jack C. Silver, Clerk  
U.S. DISTRICT COURT

RAYMOND (BILL) McCCLURE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CITATION MANUFACTURING CO., INC., )  
M. L. CLEMENT d/b/a M. L. CLEMENT )  
SALES AND SERVICE, and WEBSTER )  
AUTO SUPPLY, INC., )  
 )  
Defendants. )

No. 74-C-374 ✓

ORDER OF DISMISSAL OF CLAIMS OF THE PLAINTIFF  
AND THE DEFENDANTS, WEBSTER AUTO SUPPLY, INC.  
AND CITATION MANUFACTURING CO., INC.

Upon the Joint Application and Brief of Plaintiff and the Defendants, Webster Auto Supply, Inc. and Citation Manufacturing Co., Inc., for Order of Dismissal With Prejudice, it is ordered that the Complaint and First Amended Complaint and all causes of action of the Plaintiff, Raymond (Bill) McClure, against the present Defendants be and the same are hereby dismissed with prejudice to the filing of a future action by the Plaintiff against any of said present Defendants to this action; and that the Cross-Claim and all causes of action of the Defendant, Webster Auto Supply, Inc., against the Defendant, M. L. Clement d/b/a/ M. L. Clement Sales and Service, and also against the Defendant, Citation Manufacturing Co., Inc., be and the same are hereby dismissed with prejudice to the filing of a future action or cross-claim by the Defendant, Webster Auto Supply, Inc., against any of the other present defendants to this action.

  
ALLEN E. BARROW  
CHIEF UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

Gable, Gotwals, Rubin, Fox,  
Johnson & Baker  
2010 Fourth National Building  
Tulsa, Oklahoma 74119

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
SEP 30 1975


Jack C. Silver, Clerk  
U. S. DISTRICT COURT

RAYMOND (BILL) McCLURE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CITATION MANUFACTURING CO., INC., )  
M. L. CLEMENT d/b/a M. L. CLEMENT )  
SALES AND SERVICE, and WEBSTER )  
AUTO SUPPLY, INC., )  
 )  
Defendants. )

No. 74-C-374 ✓

ORDER OF DISMISSAL OF CLAIMS OF THE PLAINTIFF  
AND THE DEFENDANTS, WEBSTER AUTO SUPPLY, INC.  
AND CITATION MANUFACTURING CO., INC.

Upon the Joint Application and Brief of Plaintiff and the Defendants, Webster Auto Supply, Inc. and Citation Manufacturing Co., Inc., for Order of Dismissal With Prejudice, it is ordered that the Complaint and First Amended Complaint and all causes of action of the Plaintiff, Raymond (Bill) McClure, against the present Defendants be and the same are hereby dismissed with prejudice to the filing of a future action by the Plaintiff against any of said present Defendants to this action; and that the Cross-Claim and all causes of action of the Defendant, Webster Auto Supply, Inc., against the Defendant, M. L. Clement d/b/a/ M. L. Clement Sales and Service, and also against the Defendant, Citation Manufacturing Co., Inc., be and the same are hereby dismissed with prejudice to the filing of a future action or cross-claim by the Defendant, Webster Auto Supply, Inc., against any of the other present defendants to this action.

  
ALLEN E. BARROW  
CHIEF UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

Gable, Gotwals, Rubin, Fox,  
Johnson & Baker  
2010 Fourth National Building  
Tulsa, Oklahoma 74119

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In the Statement of the Issues and Designation of the Record on Appeal filed August 21, 1975, by the United States of America, no objection is made to the facts so stipulated and adopted by the Referee as his Findings of Fact on July 15, 1975.

The Court, upon examining the questions presented in this appeal finds that the crux of the alleged errors are directed to questions of law. Questions of law, on appeal from the Findings and Conclusions of Law of a Referee in Bankruptcy, have no presumption of correctness. The Referee's finding, therefore, while entitled to respect, cannot be approved without the Court's independent determination of the law.

After such independent research, the Court finds that the Order and Findings of Fact and Conclusions of Law and Supplement to and Amendment of Findings of Fact and Conclusions of Law of the Referee in Bankruptcy should be affirmed.

IT IS, THEREFORE, ORDERED that the Order and Findings of Fact and Conclusions of Law and Supplement to and Amendment of Findings of Fact and Conclusions of Law of the Referee in Bankruptcy should be and they are hereby affirmed.

ENTERED this 27<sup>th</sup> day of September, 1975.



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CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 29 1975

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

COMMERCIAL STANDARD INSURANCE  
COMPANY, a corporation,

Plaintiff,

vs.

DONALD G. EDMISTON, an individual,  
and L.C.SINOR, JR., an individual,

Defendants.

No. 74-C-432

ORDER OF DISMISSAL

Pursuant to the joint application of the parties, this matter is hereby dismissed with prejudice to the filing of a future action concerning any obligation of the plaintiff to extend automobile liability insurance coverage to L. C. Sinor, Jr., in reference to any personal injury or property damage claim of Donald G. Edmiston growing out of an automobile collision on the 28th day of April, 1974 between vehicles driven by L.C.Sinor, Jr., and Donald G. Edmiston.



United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FARMERS NON-STOCK COOPERATIVE, )  
GRAIN ASSOCIATION, a corporation, )  
Plaintiff, )  
vs. )  
J. R. WISE, a sole trader, )  
d/b/a FAIRLAND ELEVATOR, )  
Defendant. )

NO. 74-C-425

**FILED**

SEP 26 1975

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

J U D G M E N T

NOW on the 23rd day of September, 1975, there came on for trial before the Honorable H. Dale Cook, the above-styled and numbered matter. Plaintiff appeared by its duly authorized representative and by its counsel of record, Gatra Marvin, of the firm of Ungerman, Grabel & Ungerman, and the defendant appeared by his counsel of record, Gerald E. Kamins. Thereupon, the Court after hearing the testimony of the witnesses duly sworn, reviewing the evidence, and hearing arguments of counsel, found that the defendant was indebted to the plaintiff in the principal sum of \$12,770.05, with interest thereon at the rate of 18% per annum, beginning on the first day of August, 1974, until paid, together with an attorneys' fee of \$3,000.00, to be taxed as costs.

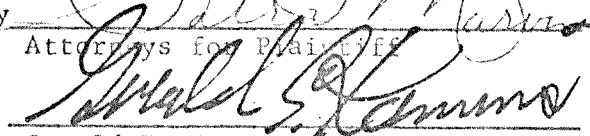
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the plaintiff have and receive judgment as against this defendant in the principal sum of \$12,770.05, with interest thereon at the rate of 18% per annum from the first day of August, 1974 until paid, together with an attorneys' fee of \$3,000.00 for the use and benefit of the plaintiff's counsel, to be taxed as costs.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

UNGERMAN, GRABEL & UNGERMAN

By   
Attorneys for Plaintiff

  
Gerald E. Kamins  
1810 East 15th Street  
Tulsa, Oklahoma  
Attorney for Defendant

LAW OFFICES  
UNGERMAN,  
GRABEL &  
UNGERMAN  
SIXTH FLOOR  
WRIGHT BUILDING  
TULSA, OKLAHOMA

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

EVELYN CRISMON,  
  
Plaintiff,  
  
vs.  
  
MUNSINGWEAR, INC.,  
  
Defendant.

No. C-74-365 ✓  
**E I L E D**  
SEP 26 1975 *mm*  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

NOW on this 26<sup>th</sup> day of September, 1975, upon the Motion  
of Plaintiff for Dismissal, the Court finds the action of Plain-  
tiff should be dismissed without prejudice.

IT IS ORDERED the Complaint of Plaintiff should be dismissed  
without prejudice to further action thereon.

  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

SEP 25 1975

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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Civil Action No. 75-C-236 ✓

*Allen E. Barnes*  
UNITED STATES DISTRICT JUDGE

BCS



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United states of America, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
97.24 Acres of Land, More or )  
Less, Situate in Washington )  
County, State of Oklahoma, )  
and Heirs of Edith Slack )  
Wilson, et al., and Unknown )  
Owners, )  
 )  
Defendants. )

CIVIL ACTION NO. 73-C-330<sup>v</sup>

Tracts Nos. 132, 136E-1,  
136E-2 and 136E-3

FILED

SEP 25 1975

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

AMENDED JUDGMENT

1.

NOW, on this 25<sup>th</sup> day of September, 1975, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of a final judgment in this matter. After having examined the files in this action and being advised by counsel, the Court finds:

2.

This judgment applies to the entire estates condemned in the tracts listed in the caption hereof, as such estates and tracts are described in the Complaint filed in this action, and supercedes the Judgment filed herein on September 8, 1975.

3.

The Court has jurisdiction of the parties and the subject matter of this action.

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause who are interested in subject property.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the

right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on October 5, 1973, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the estates taken in the subject tracts a certain sum of money, and part of this deposit has been disbursed, as set out below in paragraph 12.

7.

This action came on for non-jury trial before the Court, the Honorable H. Dale Cook, District Judge, presiding, on May 16, 1975. The issues were duly tried and a decision was duly rendered, as set forth in the document entitled "Amended Judgment and Memorandum" filed in this action on September 18, 1975. The said decision is hereby adopted as the basis for the award of just compensation for the taking of the subject property. The amount of such compensation is as shown below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estates taken in subject tracts and the amount fixed by the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendants named in paragraph 12 as owners of the estates taken in subject tracts are the only defendants asserting any interest in such estates. All other defendants having either disclaimed or defaulted, the named defendants were, as of the date of taking, the owners of the estates condemned herein,

and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tracts, as they are described in the Complaint filed herein, and such property, to the extent of the estates described in such Complaint is condemned and title thereto is vested in the United States of America, as of October 5, 1973, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estates taken herein in subject tracts were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for the taking of such estates is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the award of just compensation for the estates taken in subject tracts is as shown in the following schedule:

TRACTS NOS. 132, 136E-1,  
136E-2 and 136E-3

Owners:

Edward L. Wilson -----	1/5
Lester J. Wilson -----	1/5
Victor W. Wilson -----	1/5
Oliver D. Wilson -----	1/5
Chester R. Wilson -----	1/5

Award of just compensation		
pursuant to Court decision -----	\$45,670.73	\$45,670.73

Deposited as estimated compensation ---	27,060.00
-----------------------------------------	-----------

Disbursed to owners:

To Edward L. Wilson only -----	5,412.00
Balance due to owners -----	\$40,258.73
	plus
	interest
Deposit deficiency -----	\$18,610.73

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject tract as shown in paragraph 12, in the total amount of \$18,610.73, together with interest on such deficiency at the rate of 6% per annum from October 5, 1973, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tracts to the owners, as follows:

Edward L. Wilson ---- \$3,722.15, together  
with 1/5 of all accrued interest;

Lester J. Wilson ----- \$9,134.15, together  
with 1/5 of all accrued interest;

Victor W. Wilson ----- \$9,134.15, together  
with 1/5 of all accrued interest;

Oliver D. Wilson ----- \$9,134.14, together  
with 1/5 of all accrued interest; and

Chester R. Wilson ---- \$9,134.14, together  
with 1/5 of all accrued interest.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

FILED

SEP 23 1975

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

John C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
vs. ) CIVIL ACTION NO. 75-C-103  
 )  
 )  
BOARD OF COUNTY COMMISSIONERS, )  
Ottawa County, Oklahoma, and )  
COUNTY TREASURER, Ottawa County, )  
Oklahoma, )  
 )  
Defendants. )

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19th  
day of September, 1975, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney, the Defendants,  
County Treasurer, Ottawa County, and Board of County Commissioners,  
Ottawa County, appearing by their attorney, Woodrow G. Pendergrass,  
having filed their Answer herein on April 21, 1975.

The Court being fully advised and having examined  
the file herein finds that Defendants, County Treasurer, Ottawa  
County, and Board County Commissioners, Ottawa County, were  
served with Summons and Complaint on April 3, 1975, as appears  
from the United States Marshal's Service herein.

The Court further finds that this is a reforeclosure  
of a real property mortgage upon the following described real  
property located in Ottawa County within the Northern Judicial  
District of Oklahoma:

Beginning at the NW Corner of the NE/4 of the SW/4  
of Section 35, Township 29 North, Range 23 East  
of the Indian Meridian, Ottawa County, Oklahoma;  
thence East a distance of 693 feet for a point of  
beginning; thence South a distance of 210 feet;  
thence East a distance of 210 feet; thence North  
a distance of 210 feet; thence West a distance of  
210 feet to the point of beginning containing one  
acre, more or less.

The Court further finds that judicial sale of the above-  
described property is not necessary in that these Defendants  
do not choose to purchase said real estate at judicial sale.

The Court further finds that any right, title, or interest in and to the above-described real estate which exists by reason of personal and/or corporation taxes assessed against L. F. Betts Supply company a/k/a L. F. Betts Supply Company, Inc., K. D. Skip Root, Treva Diann Root, and A. J. Root, Jr., by these Defendants for the years 1970 through 1973 inclusive, if due and owing, are subject to and inferior to the mortgage lien of the Plaintiff as prayed in the Complaint.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Judgment be and it is hereby granted in favor of the Plaintiff, United States of America and against the Defendants, County Treasurer, Ottawa County, and Board of County Commissioners, Ottawa County.

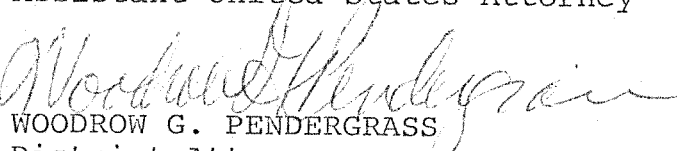
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the tax lien interest of these Defendants, if any exists, is subject to and inferior to the mortgage lien of the Plaintiff, United States of America.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no judicial sale is necessary in this reforeclosure in that these Defendants do not wish to purchase said property at judicial sale.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
ROBERT P. SANTEE  
Assistant United States Attorney

  
WOODROW G. PENDERGRASS  
District Attorney  
Attorney for Defendants,  
County Treasurer, Ottawa County, and  
Board of County Commissioners,  
Ottawa Coutny

bcs

FILED

SEP 23 1975

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
vs. ) CIVIL ACTION NO. 75-C-113  
 )  
 )  
D. EARL BATY, BETTY L. BATY, )  
COUNTY TREASURER, Delaware )  
County, Oklahoma, and BOARD OF )  
COUNTY COMMISSIONERS, Delaware )  
County, Oklahoma, )  
 )  
Defendants. )

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19th  
day of August, 1975, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney; the Defendants, County Treasurer,  
Delaware County, and Board of County Commissioners, Delaware  
County, appearing by Woodrow G. Pendergrass, District Attorney;  
and the Defendants, D. Earl Baty and Betty L. Baty, appearing  
not.

The Court being fully advised and having examined  
the file herein finds that Defendants, D. Earl Baty and Betty L.  
Baty, were served by publication, as appears from the Proof of  
Publication filed herein, and that Defendants, County Treasurer,  
Delaware County, and Board of County Commissioners, Delaware  
County, were served with Summons and Complaint on April 3, 1975,  
as appears from the United States Marshal's Service herein.

It appearing that Defendants, County Treasurer, Delaware  
County, and Board of County Commissioners, Delaware County, have  
duly filed their Answer herein on April 28, 1975, that Defendants,  
D. Earl Baty and Betty L. Baty, have failed to answer herein  
and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based  
upon a mortgage note and foreclosure on a real property mortgage  
securing said mortgage note and that the following described

real property is located in Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

A tract of parcel of land located in the SW/4 NW/4 NW/4 of Section 21, Township 23 North, Range 24 East, in Delaware County, Oklahoma, more particularly described in detail as follows, to-wit:

Beginning at a point 317.42 ft. North of the SW corner of the said SW/4 NW/4 NW/4; thence E 208.71 ft.; thence North 188.71 ft.; thence W 208.71 ft.; thence South 188.71 ft. to the point of beginning, containing 0.92 acres, less that part taken for County Road R/W which is 16.5 ft. along the West side.

THAT the Defendants, D. Earl Baty and Betty L. Baty, did, on the 15th day of September, 1971, execute and deliver to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, their mortgage and mortgage note in the sum of \$13,900.00 with 7 1/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, D. Earl Baty and Betty L. Baty, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than five months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$13,123.12 as unpaid principal with interest thereon at the rate of 7 1/4 percent per annum from February 21, 1975, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Delaware, State of Oklahoma, from Defendants, D. Earl Baty and Betty L. Baty, the sum of \$\_\_\_\_.00 plus interest according to law for real estate taxes for the year(s) thru 1974 and that Delaware County should have judgment, in rem, for said amount, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants,



D. Earl Baty and Betty L. Baty, in rem, for the sum of \$13,123.12 with interest thereon at the rate of 7 1/4 percent per annum from February 21, 1975, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Delaware have and recover judgment, in rem, against Defendants, D. Earl Baty and Betty L. Baty, for the sum of \$ .00 as of the date of this judgment plus interest thereafter according to law for real estate taxes, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment, which sale shall be subject to the tax judgment of Delaware County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

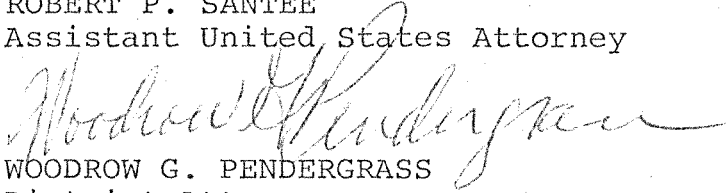
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

  
United States District Judge

APPROVED



ROBERT P. SANTEE  
Assistant United States Attorney



WOODROW G. PENDERGRASS  
District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Delaware County, Oklahoma

FILED  
12-10-75  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

W. A. FORREST, d/b/a Forrest  
Manor Nursing Home, a sole  
proprietorship,  
Defendant.

CIVIL ACTION NO. 74-C-380 ✓

STIPULATION OF DISMISSAL

It is hereby stipulated and agreed that the above-  
entitled action be dismissed with prejudice, each party to bear  
its own costs.

SIGNED this 23<sup>rd</sup> day of September, 1975.

UNGERMAN, GRABEL & UNGERMAN

By [Signature]  
Attorneys for defendant

NATHAN G. GRAHAM  
United States Attorney

By Kenneth P. Snoise  
KENNETH P. SNOKE  
Assistant U.S. Attorney  
Attorneys for plaintiff

ORDER

It is so Ordered that the Petition and the Counter-claim be and the  
same are hereby dismissed with prejudice.

[Signature]  
H. Dale Cook  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America  
for the use of Keith  
Hambleton,

Plaintiff,

vs.

No. 75-C-250

Wood Disposal Company, a  
Co-Partnership composed of  
H. E. Wellborn and Walter  
J. Madalinski, and Fidelity  
& Deposit Company of Maryland,

Defendants.

FILED

SEP 22 1975

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

Now, on the 22nd day of September, 1975, the above-styled and entitled cause came on for hearing before the Court upon the Complaint of the Plaintiff, the Answer of Fidelity & Deposit Company of Maryland, a corporation, to the Complaint of the Plaintiff, the Cross-Complaint of the Defendant, Fidelity & Deposit Company of Maryland, Against the Defendants, Wood Disposal Company, H. E. Wellborn and Walter J. Madalinski, and the Stipulation of the Parties, all filed herein. The court, having examined the files and pleadings filed herein and the Stipulation of the Parties, finds:

1. The Court has full and complete jurisdiction and venue of the parties and the subject matter of this action pursuant to the provisions of 40 U.S.C. §270(a), et seq.

2. The Court finds that the Defendant, Wood Disposal Company, a partnership composed of H. E. Wellborn and Walter J. Madalinski, entered into a contract with the United States of America for the performance of work on the Kaw Reservoir project, being Contract No. DACW 56-74-C-0083, with the United States of America, acting through the United States Corps of Engineers, under the terms and conditions of which the said Wood Disposal Company was to do certain work for the United States of America.

3. The Defendant, Fidelity & Deposit Company of Maryland, relying upon an Application for Bond, copy of which is attached

to the Cross-Complaint of the Defendant, Fidelity & Deposit Company of Maryland, and the Agreement of Indemnity on the part of the Defendants, Wood Disposal Company, a partnership composed of H. E. Wellborn and Walter J. Madalinski, and on the part of H. E. Wellborn and Walter J. Madalinski, individually, and jointly and severally, made and executed its "Payment Bond", copy attached to the Answer of Fidelity & Deposit Company of Maryland, a corporation, to the Complaint of the Plaintiff, in favor of the obligee, the United States of America, and for the use and benefit of persons supplying labor, goods and materials to the principal, Wood Disposal Company, for use in the performance of said Contract No. DACW-74-C-0083.

4. The Plaintiff herein furnished labor, goods and materials to the Defendant, Wood Disposal Company, in connection with the performance of the above-mentioned contract of Wood Disposal Company with the United States of America, and has not been paid therefor.

5. The parties have stipulated that the Plaintiff is entitled to judgment against Wood Disposal Company, a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and against H. E. Wellborn and Walter J. Madalinski, individually, and each and all of them jointly and severally, and against Fidelity & Deposit Company of Maryland, a corporation, in the amount of THREE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$3,700.00) and, in addition thereto, FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) as and for Plaintiff's attorneys fees and, further, the sum of TWENTY-THREE AND 05/100 DOLLARS (\$23.05) as costs, making a total judgment of FOUR THOUSAND, TWO HUNDRED TWENTY-THREE AND 05/100 DOLLARS (\$4,223.05).

6. The Defendant, Fidelity & Deposit Company of Maryland, a corporation, is entitled to judgment on its Cross-Complaint and Cross-Claim against Wood Disposal Company, a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and against H. E. Wellborn and Walter J. Madalinski, individually, and each and all of them jointly and severally, in the amount of FOUR THOUSAND, TWO HUNDRED TWENTY-THREE AND 05/100 DOLLARS (\$4,223.05) and, in

addition thereto, said Defendant, Fidelity & Deposit Company of Maryland, a corporation, is entitled to recover its attorneys fees and court costs herein incurred.

THE COURT, THEREFORE, ORDERS, ADJUDGES AND DECREES the Plaintiff have and is hereby granted judgment against Wood Disposal Company, a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and against H. E. Wellborn and Walter J. Madalinski, individually, and each and all of them jointly and severally, and against Fidelity & Deposit Company of Maryland, a corporation, all in the sum of \$3,700.00, together with an attorneys fee in the sum of \$500.00 and the costs of this action in the sum of \$23.05, making a total judgment in favor of the Plaintiff and against the Defendants as aforesaid in the sum of \$4,223.05; for all of which let execution issue.

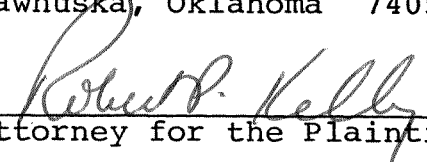
IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the Defendant, Fidelity & Deposit Company of Maryland, a corporation, have, and it is hereby granted, judgment against Wood Disposal Company, a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and against H. E. Wellborn and Walter J. Madalinski, individually, and each and all of them jointly and severally, in the sum of \$4,223.05, together with its attorneys fees and court costs herein incurred, with interest thereon at the lawful rate of 10% per annum from the date of payment of said judgment by the Defendant, Fidelity & Deposit Company of Maryland, a corporation, to the Plaintiff, until said judgment in favor of said Defendant, Fidelity & Deposit Company of Maryland, a corporation, is paid; for all of which let execution issue.



United States District Judge

APPROVED:

Robert P. Kelly  
Kelly & Gambill  
P. O. Box 329  
Pawhuska, Oklahoma 74056



Attorney for the Plaintiff

United States District Court )  
Northern District of Oklahoma) ss

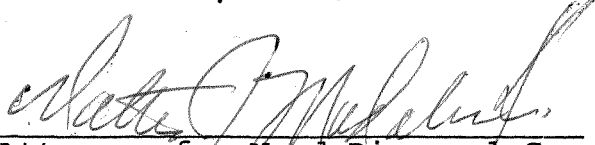
I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

Jack C. Silver, Clerk

By   
Deputy

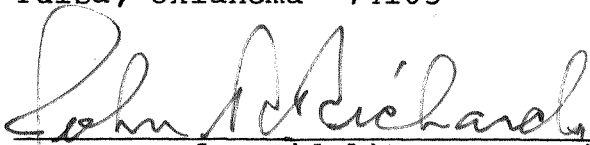
APPROVED:

Walter J. Madalinski  
San Miguel, Porter, Madalinski,  
Mayo & Lee  
1616 Tower Life Building  
San Antonio, Texas 78205



Attorney for Wood Disposal Company  
and H. E. Wellborn and Walter J.  
Madalinski, Defendants

John R. Richards  
Grigg & Richards  
200 Thurston National Building  
Tulsa, Oklahoma 74103



Attorney for Fidelity & Deposit  
Company of Maryland, Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

STUDNER-KAVALER Co., INC.,  
a corporation,

Plaintiff,

-vs-

GATEWAY INDUSTRIES, INC.,  
a corporation,

Defendant.

No. 75-C-114


FILED  
SEP 22 1975

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JUDGMENT


NOW, on this 22<sup>nd</sup> day of September, 1975, by agreement of counsel herein the above styled and numbered matter came on for hearing before the undersigned United States District Judge for the Northern District of Oklahoma, plaintiff appearing by its counsel, Ungerman, Grabel & Ungerman, and the defendant appearing by its counsel, William Leiter, and all parties having waived their rights of a trial by jury, the plaintiff proceeded to advise the Court as to the nature of the action and the defendant having stipulated in open court that the defendant is indebted to the plaintiff in the sum of \$31,157.18 on account of certain goods, wares and merchandise sold, shipped and delivered to the defendant by the plaintiff at the defendant's special instance and request and that a judgment should be entered in favor of the plaintiff and as against the defendant for said amount together with a reasonable attorney's fee in the sum of \$3,000.00.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by this Court that the plaintiff do have and recover a judgment of and against the defendant for the sum of \$31,157.18 together with interest thereon at the rate of 10% per annum from the 7th day of November, 1974, until paid, together with the further sum of \$3,000.00 attorney's fee and all costs of this action.

  
UNITED STATES DISTRICT JUDGE

APPROVED:  
UNGERMAN, GRABEL & UNGERMAN

By   
Attorneys for Plaintiff

  
William Leiter, Attorney for Defendant